

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

FERNANDA GARBER, MARC LERNER,  
DEREK RASMUSSEN, ROBERT SILVER,  
GARRETT TRAUB, and PETER HERMAN,  
representing themselves and all others similarly  
situated,

Plaintiffs,

V.

OFFICE OF THE COMMISSIONER OF  
BASEBALL,  
et al.,

Defendants.

12-cv-3704 (SAS)

ECF Case

Electronically  
Filed

**REPLY MEMORANDUM OF LAW IN SUPPORT OF JOINT MOTION  
BY THE MLB DEFENDANTS, THE YANKEES AND YES  
TO STAY THIS ACTION**

The MLB Defendants,<sup>1</sup> along with New York Yankees Partnership (“Yankees”) and Yankees Entertainment and Sports Network, LLC (“YES”), respectfully submit this reply memorandum of law in further support of their joint motion to stay pending the Supreme Court’s ruling in *American Express Co. v. Italian Colors Restaurant*, No. 12-133, 133 S. Ct. 594 (U.S. Nov. 9, 2012) (“*AMEX III*”).

## ARGUMENT

As the MLB Defendants, the Yankees, and YES demonstrated in their moving papers, the Supreme Court’s decision in *AMEX III* has implications for the entire case.

<sup>1</sup> The MLB Defendants are Office of the Commissioner of Baseball, Major League Baseball Enterprises, Inc., MLB Advanced Media, L.P., MLB Advanced Media, Inc., Athletics Investment Group LLC, The Baseball Club of Seattle, LLLP, Chicago White Sox, Ltd., Colorado Rockies Baseball Club, Ltd., The Phillies, Pittsburgh Baseball, Inc., San Francisco Baseball Associates, L.P., and Chicago Cubs Baseball Club, LLC.

Therefore, to the extent that claims against DirecTV and Comcast are stayed to protect their arbitration rights, the stay should extend equally to the claims against the MLB Defendants, the Yankees, and YES.

In their opposition, Plaintiffs argue that a stay is inappropriate because, in their view, all Defendants would continue to be involved in the case even if certain claims are compelled to be arbitrated in the wake of a decision in *AMEX III*. As a threshold matter, Plaintiffs' calculus as to how many Plaintiffs may be directly affected by *AMEX III* improperly conflates this case and the *Laumann* case and ignores that all three Plaintiffs in this case either are or may be subject to arbitration and class waiver provisions. More fundamentally, Plaintiffs' argument shows why a stay is appropriate. Plaintiffs confirm that they are alleging an essentially complete factual and legal integration of claims against all Defendants in this action, claims that (Plaintiffs allege) arise from a common set of "conspiracies" allegedly encompassing both television and internet packages. Plaintiffs do not dispute (or even address) the case law holding that it is precisely in such circumstances that courts appropriately extend a stay of claims against one or more Defendants pending arbitration to the interrelated claims against any non-arbitrating Defendants. *See* MLB/Yankees/YES Mem. at 2 (citing cases). Therefore, because *AMEX III* potentially impacts the claims against all Defendants in this action, any stay granted to protect Comcast and DirecTV pending the *AMEX III* decision should extend to the claims against the MLB Defendants, the Yankees, and YES.

Dated: January 28, 2013

Respectfully submitted,

/s/ Bradley I. Ruskin  
Bradley I. Ruskin

Jennifer R. Scullion  
**PROSKAUER ROSE LLP**  
Eleven Times Square  
New York, New York 10036-8299  
Telephone: (212) 969-3000  
Facsimile: (212) 969-2900  
[bruskin@proskauer.com](mailto:bruskin@proskauer.com)  
[jscullion@proskauer.com](mailto:jscullion@proskauer.com)

Thomas J. Ostertag  
Senior Vice President and General Counsel  
Office of the Commissioner of Baseball  
245 Park Avenue  
New York, New York 10167  
Telephone: (212) 931-7855  
Facsimile: (212) 949-5653

*Attorneys for the MLB Defendants*

/s/ Christopher Duffy  
Jonathan D. Schiller  
Alan Vickery  
Christopher Duffy  
**BOIES, SCHILLER & FLEXNER LLP**  
575 Lexington Avenue, 7th Floor  
New York, New York 10022  
Telephone: (212) 446-2300  
Facsimile: (212) 446-2350  
[jschiller@bsfllp.com](mailto:jschiller@bsfllp.com)  
[avickery@bsfllp.com](mailto:avickery@bsfllp.com)  
[cduffy@bsfllp.com](mailto:cduffy@bsfllp.com)

*Attorneys for Defendants New York Yankees  
Partnership and Yankees Entertainment &  
Sports Network, LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that on January 28, 2013, I caused the foregoing to be electronically filed with the Clerk of the Court for the United States District Court for the Southern District of New York by using the CM/ECF system.

I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Jennifer R. Scullion  
Jennifer R. Scullion  
**PROSKAUER ROSE LLP**  
Eleven Times Square  
New York, New York 10036-8299  
Telephone: (212) 969-3000  
Facsimile: (212) 969-2900  
[jscullion@proskauer.com](mailto:jscullion@proskauer.com)